

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORLANDO GARCIA,
Plaintiff,

v.

QUONG FOOK TONG,
Defendant.

Case No. 21-cv-05539-JCS

**ORDER DENYING MOTION TO
DISMISS AS MOOT AND DISMISSING
STATE LAW CLAIM**

Re: Dkt. No. 16

Plaintiff brings this action under the Americans with Disabilities Act (“ADA”) and California’s Unruh Civil Rights Act (“Unruh Act”), alleging that real property owned by Defendant does not meet the accessibility requirements of those statutes. Defendant filed a Motion to Dismiss (“Motion”), which was noticed for hearing on April 15, 2022. Instead of opposing the Motion, Plaintiff filed an amended complaint. Defendant asserts in his Reply brief that the amendment does not cure the defects identified in the Motion and therefore, the Court should grant the Motion and dismiss the amended complaint. The Local Rules do not allow the Court to grant the relief requested by Defendant, however, as the Motion does not address the operative pleading and Plaintiff has not had an opportunity to respond to Defendant’s argument that the amended complaint should be dismissed. Therefore, the Court DENIES the Motion on the basis that it is moot. To challenge the adequacy of the amended complaint, Defendant must file a renewed motion to dismiss that addresses the adequacy of that pleading consistent with the Civil Local Rules of this Court governing motion practice.

Nonetheless, the Court declines to exercise supplemental jurisdiction over Plaintiff’s state law claim under the Unruh Act. The Court notes that Plaintiff’s response to the Court’s Order to Show Cause on this question, dkt. no. 17, is virtually identical to the response filed in *Garcia v.*

1 *Maciel*, No. 21-cv-03743-JCS (N.D. Cal.). In that case, the undersigned rejected the plaintiff's
2 response and declined to exercise supplemental jurisdiction over the state law Unruh Act claim for
3 the reasons stated in *Arroyo v. Rosas*, 19 F.4th 1202 (9th Cir. 2021). *See* Case No. 21-cv-03743-
4 JCS, N.D. Cal., Dkt. No. 37. For the reasons stated in *Garcia v. Marciel*, the Court reaches the
5 same conclusion here. The Unruh Act claim is therefore dismissed without prejudice to Plaintiff
6 asserting that claim in state court.

7 **IT IS SO ORDERED.**

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9 Dated: April 5, 2022

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11 JOSEPH C. SPERO
12 Chief Magistrate Judge